

E-101, E-002/SA-88-179 (E62-01) E-002, E101/SA-88-514; GRANTING CHANGE IN ASSIGNED SERVICE AREAS AND DENYING PETITION TO VACATE AND AMEND EARLIER ORDER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the City of White Bear Lake's
Request for an Electric Utility Service Area
Change Within its City Limits

ISSUE DATE: September 22, 1988

DOCKET NOS. E-101, E-002/SA-88-179
(E62-01);
E-002, E-101/SA-88-514

In the Matter of the Petition
of Northern States Power
Company for an Electric Utility Service Area
Change Within the City of White Bear Lake

ORDER GRANTING CHANGE IN
ASSIGNED SERVICE AREAS AND
DENYING PETITION TO VACATE AND
AMEND EARLIER ORDER

PROCEDURAL HISTORY

On February 1, 1988 the City of White Bear Lake filed a petition for a change in the assigned service areas of the two utilities providing electric service within its city limits, Northern States Power Company (NSP) and Anoka Electric Cooperative (Anoka). The City had recently undertaken development of an area which spanned the assigned service areas of both utilities. The City requested that the Commission transfer the entire area to NSP's assigned service area.

The basis for the request was that it would simplify the development process if development officials could work with only one electric utility. The City stated it chose NSP because only NSP had a franchise to serve the City and because NSP already served 98% of the area within White Bear Lake's municipal boundaries.

NSP supported the City's request. On April 29, 1988 that company also filed a Petition to Vacate and Amend Order on Electric Utility Service Area. That petition asked the Commission to vacate and amend the original Order setting assigned service areas for the two utilities to the extent that the Order assigned any portion of the City of White Bear Lake to Anoka.

Anoka Electric Cooperative opposed the City's petition, stating that it could provide adequate service to the area under development and that it had never secured a franchise because the City had never required one.

The Department of Public Service (DPS or the Department) investigated the requests and recommended denial on grounds that assigned service areas should be changed only under the most compelling circumstances. The Department contended such circumstances were not present here.

FINDINGS AND CONCLUSIONS

The Commission finds that the relevant facts in this matter are not in dispute; and therefore, that there is no need for a contested case hearing in this matter. It will enter findings of these facts as follows.

The service area boundary in dispute here was drawn in 1974-75 as part of the Commission's efforts to implement the Public Utilities Act of 1974, which in part mandated the establishment of service areas for electric utilities. Boundaries were drawn pursuant to Minn. Stat. Sec. 216B.39 according to service conditions as of April 12, 1974. The rules for drawing boundaries are set forth in Section 39.

On April 12, 1974, both NSP and Anoka were serving customers within the city limits of White Bear Lake. However, only NSP had a franchise agreement with the City to provide service within White Bear Lake. NSP and the City had signed a twenty year non-exclusive franchise agreement in February 1955, which was in effect on April 12, 1974. The franchise boundaries were assumed to be coextensive with the City boundaries. Currently, the City and NSP operate under a twenty year non-exclusive franchise signed in July, 1978. The City did not have then and currently does not have a franchise agreement with Anoka.

In its April 7, 1975 Order in Docket USA-13, the Commission drew the assigned service area boundaries for NSP and Anoka in the area of White Bear Lake by drawing a line equal distance from the existing facilities of these utilities. The Commission did not consider the statutory rule requiring that the boundary be drawn along the lines of the franchise boundary.

The area currently served by Anoka east of Interstate Highway I-35E within the City of White Bear Lake was within the municipal boundaries when service areas were established in 1974-75. This area constitutes what is approximately one-third of the area now described as the West Birch Lake area. Anoka presently serves approximately 15-20 residential customers there. The remainder of the West Birch Lake area is presently largely undeveloped. However, recently new roads, water, and sewer have been extended into the area in expectation of new development. The City has asked NSP to extend electric service into the latter area.

Anoka also provides service to customers within the portion of the City of White Bear Lake that lies

west of Interstate Highway I-35E. No one has proposed here that this area be reassigned to NSP.

The assigned service area statute makes the following provisions for drawing boundary lines within municipalities:

Where a single electric utility provides electric service within a municipality on April 12, 1974, that entire municipality shall constitute a part of the assigned service area of the electric utility in question. Where two or more electric utilities provide electric service in a municipality on April 12, 1974, the boundaries of the assigned service areas shall conform to those contained in municipal franchises with the electric utilities on April 12, 1974. In the absence of a franchise, the boundaries of the assigned service areas within an incorporated municipality shall be a line equidistant between the electric lines of the electric utilities as they exist on April 12, 1974; provided that these boundaries may be modified by the commission to take account of natural and other physical barriers including, but not limited to, major streets or highways, waterways, railways, major bluffs and ravines and shall be modified to take account of the contracts provided for in subdivision 4.

Minn. Stat. 216B.39, subd. 5 (1986).

The Commission finds that this section requires that assigned service areas be coterminous with municipal franchises whenever possible. The only situation in which the boundaries may differ is in the absence of any franchise. Since there was a franchise here, there was no need to deviate from the boundaries it contained. The entire municipality should have been assigned to NSP, whose municipal franchise included the entire municipality. The Commission will therefore redraw the assigned service area to more nearly reflect this statutory requirement.

The facts before the Commission demonstrate that the area in question lay within the City in 1974 and that the City granted a franchise only to NSP to serve there. Drawing boundary lines for service areas upon the equidistant principle was an incorrect application of the applicable statute to the then existing facts. It appears to have arisen out of a mutual mistake among all parties to the service area boundary proceeding that the equidistant principle should apply despite the existence of NSP's franchise. Although a significant amount of time has passed, the Commission may correct such mistakes of law that exist in the original service area boundary Order. See Minn. Stat. Sec. 216B.25 (1986).

The Commission also has before it a petition from NSP that in substance asks the Commission to routinely reopen service area boundaries and evaluate modifications in the boundaries based upon current circumstances. NSP has proposed a number of factors that the Commission might consider in such an undertaking. The Commission does not believe that service area boundaries should be routinely changed simply based upon changes in current circumstances. Service areas were created to encourage efficient and economical provision of retail distribution services and to support the investment needed to provide adequate electric service to customers. While service area boundaries are not immutable, they should not be easily changed without a compelling showing under the standards discussed here. NSP's petition would modify this approach and the Commission finds no reason to modify it. The Commission will therefore deny NSP's petition seeking the transfer of all

territory within the White Bear Lake city limits.

The Commission will reassign to NSP only that portion of Anoka's service territory cited in the City's petition. The City did not request transfer of the other portion, and the Commission is reluctant to disturb established service arrangements without a showing of need.

Anoka may be entitled to compensation if any of its facilities are taken for use in continuing service to this area. The Commission urges the parties to negotiate a resolution of Anoka's claim. In the event they are unable to agree, the Commission will address the issue upon receiving a petition from one of the parties to this proceeding.

ORDER

1. The petition of the City of White Bear Lake requesting that all portions of the City lying east of Interstate 35E be placed within the assigned service area of Northern States Power Company is hereby granted.
2. The petition of Northern States Power Company requesting that all portions of the City of White Bear Lake be placed within its assigned service area is hereby denied.
3. Within 60 days of the date of this Order, the parties shall file a report advising the Commission of their progress in negotiating appropriate compensation for this transfer.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)